

Service Date: December 28, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Investigation)	UTILITY DIVISION
and Monitoring of Butte Water)	
Company's Capital Improvement Plan)	DOCKET NO. 90.12.93
and Financing Efforts.)	ORDER NO. 5536

ORDER TO SHOW CAUSE ON FINANCING EFFORTS

BACKGROUND AND FINDINGS

The Montana Public Service Commission (Commission) issued Adequacy of Service Order No. 5387, Docket No. 88.9.29 on December 21, 1988 which in part directed Butte Water Company (BWC) to file a capital improvement plan demonstrating the projected completion of necessary capital improvements to remedy specific inadequate facilities.

On February 23, 1989, BWC submitted a plan deemed to be insufficient on projections for distribution, filtration and storage improvements.

BWC and the Commission engaged in court proceedings which were consolidated under Cause No. 89-C-138, Montana Second Judicial District Court, Silver Bow County on August 17, 1989.

On or about December 1, 1989 BWC filed a Notice of Filing of Capital Improvement Plan (Plan) with the District Court under Cause No. 89-C-138, and at the

same time filed its Capital Improvement Plan to the Commission pursuant to the Adequacy of Service Order No. 5387 in Docket No. 88.9.29.

On December 11, 1989 the Commission deemed the filed Plan in compliance and issued its Order Accepting Capital Improvement Plan, Order No. 5387b, Docket No. 88.9.29 on January 17, 1990. In this Order, the Commission accepted the Plan as compliant, with the understanding that amounts and details of the Plan are subject to change as necessary in BWC's management judgment in the best interests of the company and its consumers. However, the requirements of Order No. 5387 must be met by any modification.

In Order No. 5387b the Commission determined it to be necessary to continue supervising and monitoring BWC until its facilities are deemed adequate. BWC was required to file modifications to the Plan as they develop.

By a stipulation and order on the Commission's Application for a Writ of Mandate entered into in May, 1990, Cause No. 90-C-182, Second Judicial District, Silver Bow County, BWC agreed to proceed with necessary capital improvements in 1990 to lift a health advisory issued by the Montana Department of Health and Environmental Sciences (MDHES). These improvements were completed and the advisory lifted on or about October 31, 1990.

BWC is required to pursue its capital improvement plan, as modified, to complete necessary improvements in 1991, 1992 and 1993. There is a class-action lawsuit for damages against Butte Water Company and its shareholder, Dennis Washington, Cause No. 90-C-90, Second Judicial District, Silver Bow County. BWC alleges that

this lawsuit prevents it from obtaining financing for its capital improvement program without a resolution or a stipulation satisfactory to bond counsel.

The Commission finds it necessary to determine whether BWC has taken appropriate action to arrange financing to complete its capital improvement program pursuant to the modified Plan and its time frames. Without timely completion of necessary capital improvements, BWC will be unable to comply with the Commission's orders on adequacy of service.

CONCLUSIONS OF LAW

The Commission is vested with full power of supervision, regulation and control of public utilities. § 69-3-102, MCA.

The Commission has the authority to inquire into the management of all public utilities, to keep itself informed, and to obtain all necessary information from public utilities in order to perform its duties. § 69-3-106, MCA.

BWC is a public utility subject to the Commission's jurisdiction and is required to furnish reasonably adequate service and facilities. §§ 69-3-101 and 69-3-201, MCA.

The Commission has the jurisdiction and authority to direct a public utility to take the necessary steps to ensure adequate service and facilities. §§ 69-3-102 and 69-3-330, MCA.

ORDER

WHEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

BWC shall file with the Commission its modified capital improvement plan.

BWC shall file with the Commission, pursuant to any Data Requests, any and all documents pertaining to its efforts to obtain financing to complete its capital

improvement program. BWC may submit additional documentation which has not been requested.

BWC shall appear before the Commission and present testimony on its efforts to obtain financing to complete the capital improvements pursuant to its Plan.

The Commission shall set a hearing date pursuant to §§ 2-4-601 et seq., MCA (Montana Administrative Procedures Act) for the first week in February, 1991, upon adequate and appropriate notice.

Done and Dated this 21st day of December, 1990 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

JOHN B. DRISCOLL, Commissioner

REX MANUEL, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.